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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd March 2006

No. 2593—li/1(BH)-42/1999(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th February 2006 in Industrial Dispute Case No. 22/2000 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Executive Engineer, Mayurbhanj Irrigation Division, At/P. O. Baripada, Dist. Mayurbhanj and its workman Shri Nagesh Kumar Rana, S/o Shri Hadibandhu Rana, At/P. O. Bairatpur, Via Radho, P. S. Udala, Dist. Mayurbhanj was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 22 OF 2000

Dated the 27th February 2006

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Executive Engineer .. First Party—Management
Mayurbhanj Irrigation Division
At/P. O. Baripada, Dist. Mayurbhanj.

And

Shri Nagesh Kumar Rana .. Second Party—Workman
S/o Shri Hadibandhu Rana
At/P. O. Bairatpur, Via Radho
P. S. Udala, Dist. Mayurbhanj.

Appearances :

For the First Party–Management	..	Shri Shaktipada Brahma
Second Party–Workman himself	..	Shri N. K. Rana

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 2009(5)-L. E., dated the 4th February 2000 for adjudication and Award.

2. The terms of the reference may briefly be stated as follows :–

“Whether the action of the management of Executive Engineer, Mayurbhanj Irrigation Division, Baripada in terminating the services of Shri Nagesh Kumar Rana with effect from the 31st March 1988 is legal and/or justified ? If not, what relief he is entitled ?”.

3. By way of this reference workman Shri Nagesh Kumar Rana has challenged the legality and justifiability of the action of the management of Executive Engineer, Mayurbhanj Irrigation Division, Baripada (in short the management) in terminating his services with effect from the 31st March 1988.

The facts of the case in brief as narrated in the statement of claim tend to reveal that the workman initially joined in his employment as N. M. R. Mate under Sunei Canal Subdivision No. II, Kaptipada under the Executive Engineer, Kalo Irrigation Division, Udala which is presently merged with the Mayurbhanj Irrigation Division, Baripada. He continued in his employment till the 30th March 1988 but surprisingly he was terminated from service with effect from the 31st March 1988. According to the workman, he had rendered continuous service since the date of joining till the date of termination with much sincerity, devotion and to the utmost satisfaction of the superior authorities but the management without any rhyme or reason had illegally terminated him from service with effect from the 31st March 1988 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). It is categorically averred in the statement of claim that neither any charge sheet for any misconduct was framed nor any domestic enquiry was conducted against him. After such termination he approached the labour machinery but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Udala ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication the workman has claimed for his reinstatement in service with back wages. Hence the reference.

4. The management, on the other hand, filed its written statement opposing the claim of the workman *inter alia* contended that the workman had never worked under the management at any point of time as claimed. According to the management it had never engaged the

workman at any point of time nor terminated his service with effect from the 31st March 1988. Neither any appointment order nor any termination order was issued to the workman by the management. It is categorically averred in the written statement that the workman had voluntarily abandoned the job with effect from the 31st March 1988 and therefore he is not entitled for any relief. On the above back grounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the action of the management of Executive Engineer, Mayurbhanj Irrigation Division, Baripada in terminating the services of Shri Nagesh Kumar Rana with effect from the 31st March 1988 is legal and/or justified ?
- (ii) If not, what relief he is entitled ?”.

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the documents such as representations addressed to the Subdivisional Officer, Sunei Field Channel Subdivision, S. D. O., Sunei Irrigation Subdivision No. IV, Udala, Executive Engineer, Minor Irrigation Division, Baripada, S. D. O., Sunei Irrigation Subdivision No. IV, Udala, A. L. O., Udala, statement showing the period of engagement from the 1st December 1984 to the 30th March 1988 under S. D. O., Sunei Irrigation Subdivision No. IV, Udala marked as Exts. 1 to 8 respectively. On the other hand, the management has examined one Shri Shaktipada Brahma and has relied upon the xerox copy of the ban order marked as Ext. A in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the issues are taken up together.

It appears from the evidence of the workman that he was working under the management of Executive Engineer, Mayurbhanj Irrigation Division, Baripada with effect from the 1st December 1984 and had rendered continuous service under the said management till the 30th March 1988. The management without any rhyme or reason illegally terminated him from service with effect from the 31st March 1988 without giving any prior notice or notice pay and retrenchment compensation. He approached the management for his reinstatement but to no effect. In his evidence he has proved all his representations and the statement showing the period of his engagement from the 1st December 1984 to the 30th March 1988 marked as Exts. 1 to 8 respectively. He has stated that the dispute raised before the Assistant Labour Officer ended in failure and the matter was ultimately referred to this Court for adjudication. Since the action of the management in terminating his services with effect from the 31st March 1988 was illegal and unjustified, he has now claimed for his reinstatement in service

with back wages along with other service benefits. He admits during cross examination that he was working under Kalo Irrigation Division, Udala from the 1st December 1984 to the 30th March 1988 and he had reported to the present management with regard to his termination from service in the year 1994. He further admits that he was neither given any appointment order nor issued with any termination order. It reveals from his cross-examination that the Mayurbhanj Irrigation Division, Baripada started functioning in the year 1988 and the maintenance of Kalo and Sunei Irrigation Projects came under the control of the present management in the year 1992 after abolition of the above projects. He has categorically stated that he was working under the Subdivisional Officer, Sunei Irrigation Subdivision No. IV, Udala with effect from the 1st December 1984 till the 30th March 1988 which was under Kalo Irrigation Division and subsequently it was merged with Mayurbhanj Irrigation Division, Baripada. He admits in his evidence that he approached the management in the year 1994 for his reinstatement in service but the management could not absorb him as the ban order was continuing. It has been suggested to him that he is not entitled to be reinstated in service with back wages to which he has negatively replied. On the other hand, the perusal of the evidence already adduced by the management through M. W. 1 clearly emerges that the Mayurbhanj Irrigation Division, Baripada started functioning in the year 1992. The workman had never worked under the management at any point of time since the date of its institution. The management had neither engaged the workman at any point of time nor terminated him from service with effect from the 31st March 1988. He has categorically stated that since the management had neither engaged the workman in service nor terminated him from service with effect from the 31st March 1988, the question of legality and justifiability of the action of the management in terminating his services with effect from the 31st March 1988 does not arise at all. Since the workman had never worked under the management at any point of time he is not entitled for any relief. He admits in his evidence that the Mayurbhanj Irrigation Division, Baripada started functioning in the year 1992 and the maintenance of Kalo and Sunei Irrigation Projects came under the control of the present management in the year 1997 after abolition of the above projects. He has categorically stated that although the maintenance of Kalo and Sunei Irrigation Projects came under the control of the present management in the year 1997 the Kalo Investigation Division is still functioning at Udala. It is also in his evidence that the employees working under Subdivisional Officer, Sunei Irrigation Subdivision No. IV, Udala and Kalo Dam Subdivision, Chuinposi were absorbed under the present management at the time of transfer of maintenance work in the year 1997. During evidence he has proved the ban order, dated the 18th September 1990 vide Ext. A. He has denied his knowledge if the present management was aware of the fact that the workman was working under the S. D. O., Sunei Irrigation Subdivision No. IV, Udala with effect from the 1st December 1984 to the 30th March 1988. During cross-examination he has further denied his knowledge if the Junior Engineer and the Subdivisional Officer of Sunei Irrigation Subdivision No. IV had engaged new persons, namely Gopal Krushna Das, Sujaya Kumar Das and Pradip Kumar Shaw after the termination of the workman. It has been suggested to him that the workman is entitled to be reinstated in service with back wages along with other service benefits to which he has given a negative reply.

8. Both the management and the workman have adduced evidence both oral and documentary in support of their respective cases. The management has taken a plea before this Court that the Mayurbhanj Irrigation Division, Baripada started functioning in the year 1992 and the maintenance of Kalo and Sunei Irrigation Projects came under the control of the present management in the year 1997 after abolition of the above two projects. The workman had never worked under the management at any point of time since the date of its institution. The management had neither engaged the workman at any point of time nor it had also terminated his service with effect from the 31st March 1988. According to the management since the workman had never worked under the management at any point of time he is not entitled to the relief of reinstatement with back wages. But after carefully examining the evidence of M. W. 1 it is clearly evident that the employees working under the S. D. O., Sunei Irrigation Subdivision No. IV, Udala and Kalo Dam Subdivision, Chuinposi were absorbed under the present management at the time of transfer of maintenance work in the year 1997. It is admitted by M. W. 1 that the maintenance of Kalo and Sunei Irrigation Projects came under the control of the present management in the year 1997 after abolition of the above two projects but surprisingly the workman was not absorbed under the present management. Even the reason for non-absorption of the workman in the establishment of the management has not at all been explained in the instant case. On the other hand the perusal of the document Ext. 8 the statement indicating the engagement of the workman under S. D. O., Sunei Irrigation Subdivision No. IV, Udala clearly emerges that the workman joined in the employment under S. D. O., Sunei Irrigation Subdivision No. IV, Udala with effect from the 1st December 1984 and as per the said statement he had worked till the 30th March 1988. The said document clearly goes to show that the workman had rendered continuous uninterrupted service with effect from the 1st December 1984 till the 30th March 1988. Admittedly the present management had neither engaged the workman in its establishment nor terminated his service with effect from the 31st March 1988 but it is not understood as to what prevented the present management to absorb the workman even after merger of the Kalo and Sunei Irrigation Projects in the year 1997. It has been clearly elicited from the evidence of M. W. 1 that the employees working under the said two projects were absorbed under the present management at the time of transfer of maintenance work in the year 1997. But in the instant case the management has not been able to explain the reason for non-absorption of the workman under the management which leaves room to entertain doubt in the evidence of M. W. 1. On the other hand, the evidence led by the workman clearly shows that he had rendered continuous uninterrupted service under the S. D. O., Sunei Irrigation Subdivision No. IV, Udala from the 1st December 1984 to the 30th March 1988. Even after merger of Kalo and Sunei Irrigation Projects with the present management in the year 1997 the case of the workman was not considered and he was not absorbed under the present management at the time of transfer of maintenance work in the year 1997. The representations of the workman submitted to the authorities vide Exts. 1 to 6 also clearly testify the above fact. On a close scrutiny and analysis of the evidence led by the workman I am of the considered view that the workman has succeeded in proving his case with regard to his claim as averred in his statement of claim. On the other hand, the stand taken by the management to the effect that the workman had voluntarily abandoned the job with effect from the 31st March 1988 is without substance.

9. After carefully examining the evidence led by the parties I am of the considered view that the workman is entitled to the relief of reinstatement under the present management, but on the facts and circumstances of the case as the workman had not worked under the present management, he is not entitled to any back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
27-2-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
27-2-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government